

**BRIGHAM CITY PLANNING COMMISSION  
TUESDAY, JUNE 06, 2006  
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Kevin Lane	Chairman
	David Hipp	Second Alternate
	Bill McGaha	Commissioner
	Reese Nielsen	Vice-Chairman
	Joan Peterson	Commissioner
	Barbara Poelman	Commissioner
ALSO PRESENT:	Mark Teuscher	City Planner
	Eliza Wood	Administrative Secretary
EXCUSED:	Steve Hill	City Council Liaison
	Deen Coleman	Commissioner
	Barbara Stokes	Commissioner
	Patti Ellis	First Alternate

AGENDA:  
WORK SESSION – AGENDA REVIEW

PLEDGE OF ALLEGIANCE

APPROVAL OF THE MAY 16, 2006 MEETING MINUTES

**APPLICATION #2262** / CONDITIONAL USE PERMIT / AGGREGATE EXTRACTION / 1200 EAST 700 SOUTH / LEGRAND JOHNSON CONSTRUCTION

**APPLICATION #2822** / CONDITIONAL USE PERMIT / MANAGERS APARTMENT, LAUNDRY, OFFICE / 219 EAST 700 SOUTH / JAN SCHOEN

**APPLICATION #2812** / M. NELSEN SUBDIVISION / FINAL PLAT / 1125 WEST 950 SOUTH / MITCHELL AND HOLLI NELSEN

**APPLICATION #2805** / AMENDED LOT 2 & 10 OF THE FOURTH AMENDMENT OF LOT 2 BID, PLAT E / 815 - 835 SOUTH MAIN / SCOTT SMOOT

**APPLICATION #2824** / DESIGN REVIEW / RETAIL CENTER / 35 EAST SKYLINE DRIVE / NADIM BAKHAZI

**APPLICATION #2823** / CONDITIONAL USE PERMIT / REHABILITATION TREATMENT CENTER-FACILITY / 1125 WEST 950 SOUTH / CATALYST RTC, LLC

**APPLICATION #2825** / PHIPPEN “LITTL” SUBDIVISION / 105 SOUTH 950 WEST / DUANE PHIPPEN AND BEULAH PETERSEN

PUBLIC INPUT:

DISCUSSION:

Chairman Lane opened the meeting at 6:32 p.m. David Hipp led the Pledge of Allegiance.

Commissioner Peterson had a correction on line 67. Add the word ‘will’ so it will read, the road will be put in.

**MOTION:** A motion was made by Commissioner Poelman to approve the minutes of May 16, 2006 as corrected. The motion was seconded by Commissioner Nielsen and passed unanimously.

**APPLICATION #2262 / CONDITIONAL USE PERMIT / AGGREGATE EXTRACTION / 1200 EAST 700 SOUTH / LEGRAND JOHNSON CONSTRUCTION**

This is a continuing application for mineral extraction. The conditions set by the Department of Environmental Quality (DEQ), on the Air Quality permit, should become part of the management plan for the operation. The Access of Management Agreement is not signed at this point. Water is an ongoing issue that will need to be determined by the State engineer. A temporary water plan will have to be worked out with the City. The final issue is Surety. The proposal, with the estimated cost, has been submitted and sent to the City engineer. Mr. Teuscher felt that the issue of Surety and Kent Jones', the City engineer, concerns should be the issues addressed at this meeting.

Duane Smith and Rick Arnold came to the table to represent LeGrand Johnson.

Commissioner Nielsen asked if the Access Agreement was pending and if there had been any further communication or discussion with the State regarding water. Mr. Smith replied that he believed the Access Agreement would happen this week or, at latest, next week. Regarding the water, Mr. Smith said that there is an attorney and engineer working on it.

With regard to the current comments on reclamation, Commissioner Nielsen asked about the cost of top soil and where Johnson's came up with the monetary figure of one dollar per yard. Mr. Smith responded that Mr. Teuscher does not have an issue with their reclamation plan as long as they have a yearly review with them. He further stated that they used worst-case scenario for their reclamation plan. Mr. Smith stated that they figured out how long it would take a 633, which is a paddle wheel that holds 33-yards, to cycle and put 8-inches over 22-acres. The slopes are all done the day after they start. They start with finish grades. Commissioner Poelman asked where they were going to get their top soil from. Mr. Smith stated that all the test logs are in the book they have. To jump start, Mr. Smith stated that he has made an agreement with Millers, where they make their compost, to get the stuff that comes off the top that does not go through the screen. He can get it at anytime and it will not cost anything.

Commissioner Nielsen asked what will happen to the access when those in attendance at this meeting are long gone and there is nothing more to take from the pit. Mr. Smith said there is a sunset clause in the agreement with Division of Wildlife Resources (DWR). At that time, they may want to keep it. It's on their property so it would be up to them.

Commissioner Nielsen stated that in addition to these items, there have been several previous items that have been reconciled and at this point he does not see any hindrances in moving forward but, that being said, he is not comfortable with not having a list of all the things that need to be put into an approval of the conditional use, at this point. Those items are not listed; there is just a summary of the current to-be-resolved issues. He would like to see Staff provide a detailed list of the things that need to be put into the conditional use permit. There are a lot of things that need to be included that are not listed today.

Mr. Teuscher explained that with every application, once it is done, Staff prepares a Conditional Use Permit. Mr. Smith interjected that this is beyond planning and zoning and is now administrative and the Commission should instruct Mr. Teuscher that they approve the application pending the conditions. Mr. Teuscher further explained that Staff will prepare a Conditional Use Permit that will have all the conditions and attachments that will go into one document that the applicant will sign and he, Mr. Teuscher, will sign for the Planning Commission and then the Conditional Use Permit will be brought back to the Commission for review and then approve business license and begin operation. It will be put together for the next Planning Commission meeting. Chairman Lane made the comment that he felt this application is to the point where he is confident that Staff can write that Conditional Use Permit. He is not

concerned about needing to see that document. He has faith in the Staff's ability to work that out with Johnson's. Mr. Smith said that it is not an overnight thing to work out and it will go around in circles for a while. Mr. Arnold stated that they could still get an approval subject to the preparation of final documents and final review. Everyone will get a chance to review the document before it is signed.

Commissioner Nielsen stated that he has not had the longevity of this application as others but he would be a lot more comfortable having the document sitting in front of him to look at before approving. Commissioner McGaha would also like to see it before final approval. He would like to see in writing all the things that have been talked about. Mr. Teuscher said the only person from the Planning Commission that will sign the Conditional Use Permit will be the Chairman. Commissioner Nielsen stated that when a motion is made to approve this, he would like, on the record, to have a list of the conditions; not approve it pending getting together with Staff and then make the decision. Mr. Teuscher read part of the ordinance and the required format of the Conditional Use Permit which also lists the things that have to be in the permit.

**MOTION:** A motion was made by Commissioner Nielsen to continue **APPLICATION #2262 / CONDITIONAL USE PERMIT / AGGREGATE EXTRACTION / 1200 EAST 700 SOUTH / LEGRAND JOHNSON CONSTRUCTION** until the June 20, 2006 meeting. In the interim, Staff will prepare a detailed list of all the conditions applicable to the Conditional Use Permit for this operation.

**DISCUSSION:** Commissioner Nielsen said that when this application was started, with this particular group of Commissioners, there were about 10 – 12 items that needed resolving. He would like to know what those are. Mr. Arnold stated that he understood what they want, for the record, a list of the conditions for the permit. Mr. Teuscher commented that he felt continuing this for another two weeks to get a list of those conditions would be reasonable.

The motion was seconded by Commissioner McGaha and passed unanimously.

Mr. Arnold clarified with Chairman Lane that they could expect that Staff will prepare what will essentially be the conditions of a Conditional Use Permit for everyone to look through and so long as everyone has a thorough review and everything looks okay, they can expect a motion at the next meeting. Commissioner Nielsen stated that was his intent.

**APPLICATION #2822 / CONDITIONAL USE PERMIT / MANAGERS APARTMENT, LAUNDRY, OFFICE / 219 EAST 700 SOUTH / JAN SCHOEN**

Approval of this application would allow Mr. Schoen to construct two buildings. One would be a residential manager's residence and another building to act as a laundry and office facility.

Jan Schoen came to the table.

Commissioner Nielsen asked Mr. Schoen if he had seen the staff comments. He replied that he had seen them. Commissioner Nielsen asked Mr. Schoen what his response was to the comment that the unit may not be compatible with the brick buildings. Mr. Schoen stated that the laundry/office will be bricked half-way up. The other building is a prefabricated house. Bricking it would have to be something he did afterwards. He cannot get it from the factory that way. He had discussed bricking it after installation. The garages in the back have vinyl siding and brick.

Commissioner Nielsen asked what was on the north side of the parking area. Mr. Schoen stated that the area is the backyards of other properties.

In the process of Commissioner Poelman making a motion, Mr. Teuscher noticed that the staff evaluation for this application was missing a page. All the Commissioners were missing a page of that evaluation. Therefore, Mr. Teuscher advised that the Commission continue this application

until they see a full set of the Staff comments or if they are comfortable in approving this without reviewing the full set of comments they can do so. Mr. Teuscher asked Mr. Schoen if he was comfortable with his application being continued for two weeks. Mr. Schoen stated that the house is prefabricated, he has already been putting it off and the price is about ready to go up again. Mr. Teuscher stated that he is uncomfortable with not having the full set of comments in front of the Commission. There were some issues listed from some of the departments. He suggested continuing until the next meeting.

**MOTION:** A motion was made by Commissioner Poelman to continue **APPLICATION #2822 / CONDITIONAL USE PERMIT / MANAGERS APARTMENT, LAUNDRY, OFFICE / 219 EAST 700 SOUTH / JAN SCHOEN** until June 20, 2006 meeting. The motion was seconded by Commissioner Nielsen.

Discussion: Commissioner Nielsen asked who does the final approval on the parking if this is approved. Mr. Teuscher and Chairman Lane said part of the approval would be the parking.

Mr. Schoen commented that the apartments are subsidized and most of the residents have no vehicle and those that do have only one.

The motion passed unanimously.

**APPLICATION #2812 / M. NELSEN SUBDIVISION / FINAL PLAT / 1125 WEST 950 SOUTH / MITCHELL AND HOLLI NELSEN**

This is the final plat for the M. Nelsen Subdivision. It was noticed that this application was missing two pages of the Staff evaluation. The tape was stopped in order to make copies of the missing pages for the Commission. The copies were made and distributed to the Commissioners. The applicant had some issues from the preliminary that he wanted to address with the Commission.

Mitch Nelsen came to the table. He stated that he had talked to some of the people in administration about the salt brine that is used on Valentine Lane, the lane down by Southern Post, to keep the dust down. It is sprayed once a year and has been very effective in the past. In discussing the paving of the road, if they were required to pave it, when the time comes when the city road does go through there, the road paved for the driveway would have to be torn up and taken down to the grade used for the city road which would be an extra expense when putting in the road. He is requesting the Commission allow them to use the same solution that the City uses to keep the dust down on Valentine Lane.

Commissioner Poelman stated that she was not familiar with Valentine Lane. Chairman Lane explained that it is the road about 400 South and west of 800 West, by the LDS Stake Center, that runs down past the railroad tracks all the way to 1200 West. Mr. Nelsen commented that people use that road all the time and it is probably used as much or more so than any other street in Brigham City by teenagers that are learning to drive.

Kirk Nelsen came to the table. He stated that they have land down at the end of that lane. It goes down and turns south and dead-ends at the land. The people that had pastures along that way complained because they were getting so much dust on it. The City, for the last 10 years, has put magnesium chloride on it and it does a beautiful job. It stops the dust and creates kind of a hard surface.

Chairman Lane said that the Commission discussed, in the work session, who would be responsible for doing that every year on that piece of property. Because it is going to be a dedicated space for a road, would the City then be responsible for spraying the treatment onto the road every year at additional cost? Mr. Kirk Nelsen said that they would be responsible because

they have the subdivision. Part of the road is dedicated; the part that goes down behind the house is not a dedicated road. A half-road is dedicated running north and south.

Commissioner Poelman commented that the property is being sold. Mr. Mitch Nelsen stated that only part of it was being sold. There are 20-acres there. They want to sell 5-acres and maintain the other 15 for future development. All of the half-road that is dedicated is in the 15-acres that they will still own and would have to maintain. Commissioner Poelman asked what would happen if they sold it. Mr. Kirk Nelsen replied that there are a lot of things that would need to be done. He said it would probably not be sold until the realignment of 1200 West is done.

Commissioner Nielsen commented that at present, the only proposal is to take care of the half-road associated with lot-2. Mr. Mitch Nelsen added that would include the lane going up behind the Parker's. Mr. Teuscher said the actual road dedication would go all the way down to the end of lot-1 so this will be fully dedicated. The ordinance requires a turn-around. Mr. Kirk Nelsen stated that he talked to Jim Buchanan, the Fire Marshal, and he said a temporary turn-around or a hammer-head would be sufficient for anything the fire department would need. The garbage trucks and the snow plows do not go down there. A hammer-head is a T-shaped space that is big enough for a fire truck to make a three-point turn easily.

Mr. Teuscher stated that as part of the motion of approval, it needs to be recommended to the City Council to defer improvements on this half-street until the full road goes through which could be a long time. What it comes down to is a monetary issue. The question is, is there going to be enough traffic to generate a need for asphalt versus magnesium chloride. The application for the rehabilitation center has been required to do a traffic study. To some extent they need to be connected.

Wynn Parker came to the table. He stated that when they signed an easement form to use his private driveway to access theirs it was with the intention of it being used for a private dwelling. Mr. Parker said that he is not happy with the idea that his driveway is going to be turned into an access for a commercial operation. He also understands that there is not anything he can do to change that easement. He also stated that he and his brother went to the expense of asphaltting their own driveways to cut down on the dust problem and they feel that if this is going to be turned into a commercial operation, asphaltting the road should be required. He agrees that magnesium chloride solution does help. He has seen roads in Idaho where it has been used for several years and on high traffic roads it doesn't seem to entirely eliminate the dust and what dust does come has magnesium chloride in it. It helps but does not stop tracking gravel and residue out onto the asphalted roads which, in this case, would be his driveway. It would be better than nothing but he would much prefer to see it asphalted or at least the portions behind his brother Tim's house because he is the one that really suffers from the dust. He said he understands the cost because they asphalted their own driveways but he felt it would be the better solution for the long term.

David Hipp had a question on the recommendation from Staff. It indicated that the Street Department did recommend a 20-foot asphalt surface with a temporary turn-around. Did they also consider the other option when they made that recommendation? Mr. Teuscher stated that he thought it was discussed.

Commissioner Nielsen read the engineering comment, number 7, that the access that comes down be shown as parcel-A and not part of either lot-1 or lot-2. Mr. Teuscher responded that it really comes down to what the county recorder will allow. If we create a long narrow strip as a separate parcel, we are in essence creating an illegal parcel. We would suggest it become part of lot-2. Having it as a separate piece it becomes a non-buildable lot. Commissioner Nielsen commented that at this point there is no practical way to recommend approval of this with a full street. Mr. Teuscher reiterated that the City Ordinance states that the City does not prefer half-streets. The City prefers a full right-of-way. The Nelsens have asked the Commission to consider it as a half-street. They would like a waiver of the Code and deferral of improvements. This is a recommendation that the Commission will give to the City Council. If the Commission chooses to



not to make that recommendation then they will have to figure out how to get a full right-of-way. It would then fall back onto the Nelsens to resolve that issue. It is a question of how the Commission chooses to decide. Commissioner Nielsen commented that he cannot see how that would be in the City's best interest. He also commented that it makes no sense, in discussion, to have a full street when all there is, is a tiny little stub street for access to it anyway. Mr. Teuscher said there are possibilities to bring a road through. It is all on Tim Parker's property, the question is whether the Commission wants to force that issue and not recommend then it would be their responsibility to work that out with Mr. Parker. He said he does not see a reasonable way to get a road in there other than coming through Mr. Parker's property.

Chairman Lane asked if at this point it is sufficient to do as requested to keep the dust down if the use is going to stay as a home. Does it need more than that depending on what business went into it or if it stayed a home? Mr. Teuscher said when this application was first looked at; it was known there may be a potential applicant. It needs to be treated as typical large residential lots. They are in an A-5 Zone. For just two homes, that would be adequate. On the agenda there is an application for a Rehabilitation Treatment Facility. This is an allowed commercial use for the zone. That is something you probably need to recognize.

Commissioner Nielsen asked if it was possible to approve this application, as requested, and add the condition that if the use changes then the road has to be paved or does it have to be done at this point? Mr. Teuscher suggested that it could be included in the motion to approve with magnesium chloride if it is a residential home and if a commercial use goes in there than require it to be paved.

Trevor Loria commented from the audience. He was asked to come to the table for the record. Mr. Loria is the applicant for the Residential Treatment Facility which is Catalyst RTC, LLC. He asked if it would be appropriate to bring forth the traffic study and discuss it. Chairman Lane said that he realizes that his application will come up shortly but at this time the issue is the division of these two lots. The traffic study really comes into the use that Catalyst has for their application to determine what effect it will have on that real estate. That is why it has not been addressed at this point. Mr. Loria said he wanted to offer the information in the traffic study (which was done by professional land surveyors) so they would see the actual daily use of that road will be one to two trips less than what the current use is with Mr. Nelsen, Holli Nelsen, their teenage drivers, their family and all the other trips that are made daily. He wants to make sure that he is not held to a condition of; if it is a residential use magnesium chloride will be appropriate but if it is a "commercial" or private business access than it would automatically make it a paved road because of what use is there. He feels it should be based more on the traffic study.

Commissioner Poelman commented that Staff did recommend that there be 20-foot wide access paved. Mr. Teuscher said that would meet fire code.

**MOTION:** A motion was made by Commissioner Nielsen to forward to City Council with recommendation for approval **APPLICATION #2812 / M. NELSEN SUBDIVISION / FINAL PLAT / 1125 WEST 950 SOUTH / MITCHELL AND HOLLI NELSEN** with the stipulations that it comply with Utah Code 10-98 part 6, Chapter 25 Subdivision Ordinance, Chapter 29 Zoning Ordinance; recommend that a half-street that is dedicated and improved with a 20-foot asphalt surface and a temporary turn-around; recommend that further improvements be deferred pending further development of either one of those particular parcels; that the Staff and Engineering comments are complied with; based on the finding of fact that the applicant shall comply with the Utah Code 10-9A, Brigham City Code Chapter 25 Subdivision and Chapter 29 Zoning Ordinances and the finding of fact that such use will not under that circumstances of this particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with

the Brigham City General Plan. The motion was seconded by David Hipp and passed unanimously.

**APPLICATION #2805 / AMENDED LOT 2 & 10 OF THE FOURTH AMENDMENT OF LOT 2 BID, PLAT E / 815 - 835 SOUTH MAIN / SCOTT SMOOT**

This is a continuation. There were some minor adjustments and a letter from the Bank of Utah. The applicant has brought a plat with the changes that were discussed.

Scott Smoot came to the table. Mr. Teuscher showed the area that was being vacated.

**MOTION:** A motion was made by Commissioner Poelman to recommend to the City Council for approval APPLICATION #2805 / AMENDED LOT 2 & 10 OF THE FOURTH AMENDMENT OF LOT 2 BID, PLAT E / 815 - 835 SOUTH MAIN / SCOTT SMOOT based on the stipulations that it comply with the Utah Code 10-9A-608 and comply with Chapter 25 Subdivision Ordinance and comply with Staff comments. Based on the findings of fact that the applicant will comply with Utah Code 10-9A-608, Brigham City Code Chapter 25 and the Subdivision Ordinance and such that it will not under the circumstance of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and is in compliance with the General Plan. The motion was seconded by Commissioner Nielsen and passed unanimously.

**APPLICATION #2824 / DESIGN REVIEW / RETAIL CENTER / 35 EAST SKYLINE DRIVE / NADIM BIKHAZI**

This location is where Golden Spike Motors is currently occupied. There are some access issues in terms of where they are siteing some accesses. Typically, these are adjacent but because of grade changes and elevation there is a slight offset on the west access.

Nadim Bihkazi, President of Bihkazi Asset Management, Michael Scheuller, a partner, and Richard Wright, of Richardson Design, came to the table.

Commissioner Nielsen asked if parking should be addressed as part of this design review. Mr. Teuscher replied that there is a whole myriad of uses that could go into these units. Some may require less parking and some may require more. That may have to be addressed in each individual application. At the outset of looking at this, there is sufficient parking if it is all retail. If a use comes in, that would be something that would have to be addressed on a case-by-case basis. We will be dealing with these uses on a business license application and will be addressed on a case-by-case basis by Staff.

Mr. Bihkazi stated that two of the interested parties are retail non-food users. He expects there will be one or two food users at the most. The way the design is set out, the requirements from Brigham City are 4 per 1,000 and they are allotting 4.8-spots per 1,000 for a total of 59 spots and what is required by the City is 48. If the rest were filled with restaurants it would cause a problem but they will stay within the guidelines. They do not expect to change that. They would have to limit the amount of restaurants based on that.

Commissioner Nielsen commented that since the access is coming in off of Skyline, the Commission does not need to discuss this with DOT, it would be the Commissions own initiative. He said he recognizes there are some problems depending on where the entrances into the parking are put. Mr. Teuscher stated that the City recognizes that Skyline is probably not a real good location, as it is. It conflicts with traffic movement on Highway 89 and with traffic movements on 1100 South. A median could be put in but it would force drivers to go up the canyon, turn into the subdivision and come back down which is probably not preferable. The City is looking at realigning Skyline. How it is realigned becomes a long-term issue that needs to be worked out. The applicants have been party to a discussion in that and are willing to be participatory if at some point that piece becomes a consolidated development and Skyline is

moved farther south from the intersection. At that point it would become a joint exercise. That will come back to the Commission as part of a larger development. The owners have already indicated that they are willing to work with the City on that issue. The problem is that there is an existing commercial zone and access at this time. UDOT is not going to make any changes at this point. There is one issue along the highway, at this point, the plan needs to show sidewalk. If we do need sidewalk along that piece to connect to any crosswalks that are in the intersection, that may be something that needs to be looked at.

Commissioner Poelman asked Mr. Bihkazi if he had seen the Staff evaluation and if he had any questions on the suggestions. Mr. Bihkazi replied that he had not seen them. Mr. Teuscher stated that the applicants are sent copies of the evaluations. Chairman Lane commented that he liked what they have for landscaping and that it really dresses up the corner.

Mr. Bihkazi asked Mr. Wright to comment about the esthetics and what their attempt was trying to do on the corner. Mr. Wright stated that in reality it is a great location so they have located the buildings at the corner to create that presence and, at the same time, helping to define the corridor. They have located the parking in the rear so as to not have a massive parking lot as the focus. The building has a presence there and it is going to be a great fit for that location. On some of the corners, in different perspectives, there will be seen more of a side view. Chairman Lane said they have given the design some effort so as to not be looking at a blank wall. Commissioner Nielsen asked if it is appropriate, at this point, to continue this application for two weeks because the applicant had not seen all the Staff comments. He felt that it is appropriate for the applicant to have a chance to look at the comments. Mr. Bihkazi said it would not delay their plans.

**MOTION:** A motion was made by Commissioner Nielsen to continue **APPLICATION #2824** / DESIGN REVIEW / RETAIL CENTER / 35 EAST SKYLINE DRIVE / NADIM BIHKAZI to the June 20, 2006 meeting to give the applicant sufficient time to discuss comments with Staff and the City engineer. The motion was seconded by Commissioner Poelman and passed unanimously.

**APPLICATION #2823** / CONDITIONAL USE PERMIT / REHABILITATION TREATMENT CENTER-FACILITY / 1125 WEST 950 SOUTH / CATALYST RTC, LLC

This is an allowed conditional use within the zone. This is a unique use which is protected somewhat under the fair housing act and the ADA. As a city, we can address those life-safety issues that deal with this site. The clientele is somewhat out of our control under our ordinance and under what the State will allow, the courts have told cities that they do not have the ability to manage that. It is a protected group. They have the right to fair housing in whatever location that is. The Commission and the audience need to understand that there are limitations of what this Planning Commission can look at. The clientele, who are going to be at this facility, is protected. Who they are and what they are, the Court basically says is none of your business. If the therapists have indicated that they are persons with a disability, that is all the information that needs to be disclosed. If the applicant chooses to tell you they have certain criteria, they are more than welcome to provide that information to you but the Commission does not have the ability to restrict them if they choose to do so. Things that can be looked at are physical things that deal with property such as the building code, does it have ADA accessibility, sufficient fire protection, is the access adequate. These are the health safety issues that we as a city can only deal with.

Commissioner Nielsen asked Mr. Teuscher to clarify a statement that a rehabilitation/treatment facility does not include a residential facility for persons with a disability. The whole premise up to this point was that disabilities, as defined by Federal and State law, preclude and define what can and can't be done. Mr. Teuscher stated that the definition was originally done a few years ago. Court cases have basically said that line is illegal so we have to ignore it. Jody Burnett, a land use attorney, came to address the City Council and Planning Commission to discuss this. Persons with a disability have the right to be wherever they choose to be. Our definition, we would like to think it is correct, the reality is, legally, we are probably not able to do that.



Commissioner Nielsen stated that it sounds like the code needs to be rewritten to be in compliance. Mr. Teuscher stated that everyone in Utah needs to rewrite their code on this issue. Commissioner Nielsen commented that in the work session the question came up as to whether or not the facility would accept court-ordered versus voluntary placement. He asked the applicant to explain.

Trevor Loria, Seth Geisler and another representative came to the table. Mr. Loria explained that in the Staff Review he attended, the Chief of Police was there and asked that question. At this time, they are not intending to take court-ordered or any type of court-related youth/clients at all. That is not their intention. They are more private pay family referral type placements not adjudicated or court related clients. Mr. Geisler commented that people with emotional/mental disabilities often self-medicate with drug use and so sometimes these clients do get criminal charges such as possession of marijuana or those type of things. So some of those clients may have a charge against them but they will not be in State custody. The intent is to not take those type of kids that are in the juvenile justice system.

Commissioner Poelman had a question. She said they had included mental illness, learning disability and drug addiction and wondered if there were any other issues such as sex offenders or sexual abuse and if pedophilia would fall into that category. Mr. Geisler stated that they are not planning or organized to take sex offenders nor are they interested in treating those who offend sexually. That is not their intent or desire. The DSM is a very broad manual that professionals use and pedophilia probably would fall into that category.

Commissioner Poelman brought up the comment of fire sprinklers. Mr. Loria said they are in the process of working with the Building Department on this issue for fire safety. Their fourth partner spoke with the person from the State that deals with group homes and residential facilities. He inspects them and works with the Department of Human Services and he basically said that they will have to have a private meeting with the Fire Marshal and go to that building with the Fire Marshal and discuss with him if there is window access/smoke detectors to determine whether they meet fire code. The question of fire suppression or a sprinkler system is up in the air right now. They are trying to find out the actual position of the State because Jared Johnson, the Building Official, requested to speak with the gentleman from the State to find out exactly what the guidelines are for that. They believe they need to get into the property and into the building with the Fire Marshal to evaluate how a person would get out of each room and if what is needed is a ladder or fire escape or what the actual specific requirements will be. There are a lot of different levels. If there is a program like this, where the doors and windows are locked so people can't leave, then there needs to be a sprinkler system. In this facility, it is not designed to be locked door and window. They are well on their way to addressing that and they just need to have that meeting with the Fire Marshal.

Mr. Teuscher stated that one item they should probably address is that the Street Department, which also handles refuse collection, was going to treat it as a residential facility but after looking over the ordinance, this will be treated as a commercial facility under our code and they will need to contract with a private firm to collect garbage commercially. All commercial uses have to contract with a private firm. This is new information that the applicant is probably not aware of. Mr. Loria commented that they assumed that they would need their own garbage collection and they are not too concerned about that. Their plan was to have a dumpster there. Mr. Teuscher said that should probably be included in the motion.

Mr. Loria said he had a copy for everyone of the traffic impact study that was done. Another request that was made from the staff was to see a floor plan of where these clients would be sleeping, where they would be staying and where the bathrooms are. They are having a difficult time tracking down the original blueprints for the property so they drew their own. There is a main floor and a second floor that shows kitchen, bathrooms and sleeping arrangements. Mr. Loria passed those out for the Commissioners to review.

Commissioner Peterson asked what the size of the staff will be. Mr. Geisler replied that with 24 youth in the facility there would be nine staff required at all times. There is one staff for every four youth during daytime/waking hours. During sleep hours there is one graveyard staff for every eight clients. Six staff during the day and three staff overnight at the maximum capacity. The graveyard shift staff does not live there, they work that shift.

Commissioner Nielsen asked what the resolution to the question from the Police Department regarding the ability to represent the parent or guardian if there is a law enforcement issue. When clients go to the facility, a document is signed that allows for legal issues. The response was, that a document is signed for medical issues and power of attorney. They are required to fill out what is called an ICPC, Interstate Compact for treatment. They are required by law to do that anytime a child comes across state lines to another facility to treat. That would all be included in that packet. The referral network for a facility like this is national. Because of the location, most of the kids are from the neighboring Pacific-Northwest states.

Commissioner Nielsen stated that in their April 21, 2006 letter, they made the note that Catalyst would not be serving state custody or adjudicated youth. He asked if they would voluntarily accept that as a condition of the Conditional Use Permit. He added that he did not think they could one-sidedly impose if they objected to that. Mr. Teuscher stated that our ordinances do not restrict them. He supposed that if they wanted to self-impose they could but the issue that they will probably look at is that they have nothing to hold them to other than to say at this point in time this is how we operate. If down the road if another RTC buys them out, it is not our role to determine how that RTC manages. If they change the clientele it becomes a condition that is really not enforceable.

Chairman Lane invited those in the audience that would like to comment on this application to come forward.

Wynn Parker came forward. He commented that it was said the traffic study indicated that there would not be anymore traffic than there is at present but yet they are planning on having commercial garbage pickup so there will be commercial trucks in and out of his driveway which does not make him any happier than before. Mr. Teuscher stated that staff needs to review the traffic study which may adjust some of the numbers. Staff needs to spend some time looking at this to get some answers.

Commissioner Poelman asked about periodic examination of the facility. Mr. Geisler stated that there is a State licensing office that oversees that and will come in and inspect the facility before they are allowed to take any clients. They will come in for random and scheduled visits. They are very thorough. Mr. Teuscher asked that this item be continued to allow Staff time to review the traffic impact study. There are a couple of questions that he would like to address to the City engineer.

**MOTION:** A motion was made by Commissioner Poelman to continue **APPLICATION #2823 / CONDITIONAL USE PERMIT / REHABILITATION TREATMENT CENTER-FACILITY / 1125 WEST 950 SOUTH / CATALYST RTC, LLC** until the June 20, 2006 meeting. The motion was seconded by Commissioner Nielsen and passed unanimously.

**APPLICATION #2825 / PHIPPEN "LTTL" SUBDIVISION / 105 SOUTH 950 WEST / DUANE PHIPPEN AND BEULAH PETERSEN**

Duane Phippen came to the table. Mr. Phippen explained that he had a partner that sold to Petersens. Mr. Teuscher stated that this is an enforcement issue that needs to be resolved by splitting the parcels. Doing this will make them two separate legal parcels. It has been recorded at the county but the City has not approved this division. This will bring them into consistency with City ordinance and the City will then be able to issue Mr. Phippen a business license for his business.

Commissioner Nielsen asked if this approval is forwarded to the City Council. Mr. Teuscher replied that it will be forwarded to the Council.

**MOTION:** A motion was made by Commissioner Nielsen to forward to the City Council with the recommendation for approval **APPLICATION #2825 / PHIPPEN "LTTL" SUBDIVISION / 105 SOUTH 950 WEST / DUANE PHIPPEN AND BEULAH PETERSEN** and along with that a recommendation for deferral of sidewalk associated with that and with the stipulation that it comply with the Staff evaluation and comments and Chapter 25.06.080 requirements for a fewer than ten lot subdivision based on the finding of fact that the applicant will comply with the Staff evaluation and that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the Brigham City General Plan. The motion was seconded by David Hipp.

**DISCUSSION:** Commissioner Nielsen added that he felt it should be noted that they also recommend sidewalk deferral. He wanted to make sure it is included in what gets forwarded to the City Council.

The motion passed unanimously.

**PUBLIC INPUT:**

There was no public input.

**DISCUSSION:**

There was no discussion.

**MOTION:** A motion was made by Commissioner Nielsen to adjourn. The motion was seconded by Commissioner Poelman and passed unanimously.

The meeting adjourned at 8:24 p.m.

*This certifies that the minutes of June 06, 2006 are a true and accurate copy as approved by the Planning Commission on \_\_\_\_\_.*

*Signed: \_\_\_\_\_  
Jeffery R. Leishman, Secretary*